

William L. Roughton, Jr.
Attorney at Law

June 1, 1995

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street
Room 222
Washington, D.C. 20554

REC'D
5/10/95


Re: Comments To Third Further Notice of Proposed Rulemaking
Implementation of Sections 3(n) and 332 of the Communications Act
GN Docket No. 93-252

Dear Mr. Caton:

Enclosed are an original and nine copies of the comments of PCS PrimeCo L.P. in the proceeding captioned above.

Please direct any questions you may have to me.

Very truly yours,


1310 North Court House Road
Fifth Floor
Arlington, Virginia 22201
703-351-4541

No. of Copies rec'd
List A B C D E

0+9

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)	
)	GN Docket No. 93-252
Implementation of Sections 3(n) and 332)	
of the Communications Act)	
)	
Regulatory Treatment of Mobile Services)	

COMMENTS OF PCS PRIMECO TO
THIRD FURTHER NOTICE OF PROPOSED RULE MAKING

In its Third Further Notice of Proposed Rule Making, the Commission proposed to extend the 45 MHz spectrum cap currently imposed upon cellular telephone service, specialized mobile radio (SMR) service, and broadband Personal Communications Service (PCS) licensees who are classified as Commercial Mobile Radio Service (CMRS) providers. The proposed extension would include all cellular, SMR, and PCS carriers regardless of classification. In addition, the Commission has asked for comment on a further extension of the spectrum cap to include those "grandfathered" SMR licensees that continue to be regulated as Private Mobile Radio Service (PMRS). While PCS PRIMECO has reservations about the advisability of imposing any spectrum cap at all, it nonetheless believes that it is unworkable and unfair to impose a spectrum cap on one class of mobile service only. Consequently, PCS PRIMECO supports the proposed extension as a means of assuring a level playing field for all mobile carriers.

Asymmetrical regulatory schemes provide skewed incentives to the regulated entities. In the present case, the exemption of PMRS carriers and services from the spectrum cap will inevitably tempt some operators to game the system for competitive advantage by exploiting the potential benefit in cost structure that could result from spectrum acquisition as opposed to more efficient - and capital intensive - use of existing spectrum. Requiring all mobile carriers to operate with the same spectrum cap will assure that competition occurs on the basis of innovation and service and not on the basis of artificially created advantages.

Moreover, under the current spectrum cap guidelines, the Commission could find itself caught up in complicated disputes over how much of a cellular, SMR, or PCS carrier's spectrum should be allocated to the CMRS cap when such a carrier undertakes to provide both PMRS and CMRS. Past experience with discerning the dividing line between private and common carrier mobile service offers no evidence that the task is a

simple one. Given the regulatory opportunity to expand beyond 45 MHz, it is difficult to believe that some carriers would not bend their ingenuity to finding competitive advantage in a regulatory loophole rather than expending the same energy to gain a market advantage through better products and services. In such an environment, the Commission will surely be called upon to referee hairsplitting disputes of private versus commercial mobile radio service offerings. With the important changes taking place in telecommunications, PCS PRIMECO submits that this is not the highest and best use of the FCC's resources.

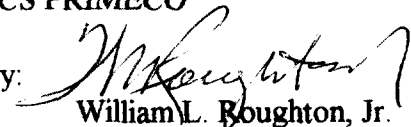
Finally, if the Commission decides to extend the spectrum cap to the "grandfathered" PMRS carriers, it should impose the cap on those carriers without delay. To wait until August 10, 1996 - the end of the "grandfathering" period - will simply encourage the very result the FCC wants to avoid.

In light of the foregoing reasons, and without endorsing the notion of spectrum caps, PCS PRIMECO urges the Commission to extend the spectrum cap to all cellular, SMR, and PCS services regardless of classification and to the "grandfathered" SMR licensees. Doing so will assure equality and simplicity in the regulatory treatment of mobile services.

Respectfully submitted,

PCS PRIMECO

By:



William L. Boughton, Jr.

1310 North Court House Road

Arlington, Virginia 22201

703-351-4541

Its Attorney